

Response to Comments Received During Public Notice of NPDES General Permit for Discharges from the Application of Pesticides, SCG160000

Written comments received during the public notice period are summarized below. If similar comments were received, they were combined for the purposes of this response. Each comment summary is followed by the Department's response. The original comments, as submitted, are included in the administrative record for this permit.

1. **General Comment:** Added cost to operators may inhibit or discourage self-monitoring, reporting, and compliance. The Department should establish an online reporting system in order to decrease administrative burden and costs and increase public access to information.

Response: An online reporting system is something that the Department hopes to establish in the future when funding and resources allow. However, current resources prohibit the development of such a system in time for this permit decision.

2. **General Comment:** Multiple operators applying pesticides to the same waterbody where use patterns overlap may result in additive and synergistic effects. The Department should establish a searchable online database that tracks pesticide applications by waterbody to identify and alleviate overlapping application problems.

Response: Currently, the Department is developing an online NOI system which will 'feed' NOI information into the Department's EFIS database. At a minimum, this information will be accessible via the Department's Freedom of Information office. As resources allow, however, the Department hopes to develop an online system that will allow users to access the pesticide application location information provided by NOIs. Please note that the Department will only receive NOI information from those operators exceeding a threshold or those that submit discretionary NOIs.

3. **General Comment:** What is your education process prior to implementation and enforcement of the new permit? To prevent unintentional violations, the Department should establish a process to educate permittees regarding their obligations under the general permit. A flow chart would help operators better understand when a NOI is required, how to calculate acreage for thresholds, and clarify the process.

Response: There will be a compliance assistance session scheduled for the general permit - check the Department's webpage, http://www.scdhec.gov/environment/water/npdes_pesticide.htm, for details. The Department's rationale/fact sheet (Page 4) already includes a chart describing which operators are required to submit an NOI. We are also developing a flow chart to assist in compliance. Guidance will be added to the Department's webpage as it is developed.

4. **General Comment:** All references in the Federal Register are Waters of the United States. DHEC has chosen to make the permit applicable to Waters of the State which is much more restrictive. This seems to be arbitrary and not fully explained in the permit.

Response: The Department is directed by the Pollution Control Act (SC Code of Laws, Title 48, Chapter 1) to protect waters of the State which are defined by the act – see definition of "Waters" under Section 48-1-10 of the Act. See Section II.1.b of the Fact Sheet/Rationale which references the Department's authority to develop this permit.

5. **General Comment:** There is a lot of overlap between this permit and other NPDES permits required by the state and between this permit and the FIFRA requirements. If a jurisdiction is already covered under an NPDES permit for stormwater – are they required to obtain the pesticides permit? Is this related to section 1.1.2.3? - Are we excluded from this permit because we already have a Stormwater NPDES permit to discharge? There are other NPDES permits that require (some) jurisdictions to have Operations and Maintenance plans, standard operating procedures for pesticide, herbicide, and fertilizing operations. In some respects the work is duplicative but often there are slight nuances between the permit requirements, reporting deadlines, monitoring, plan components and even definitions. The state is requiring very similar activities to be performed under multiple permits. Greater coordination and communication is needed, either to streamline the requirements or to regulate compliance for an activity under a single permit and not multiple permits. Incorporate requirements for pesticides into the MS4 permit to satisfy DHEC's mandate to have a permit in place and to avoid a new permit for municipalities and counties.

Response: The MS4 program and permits and the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities are designed to deal with pollutants that may be found in storm water runoff. The NPDES General Permit for Discharges from the Application of Pesticides is directed toward point source discharges (i.e. discharges directly to surface waters of the State). Coverage under an MS4 permit or the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities does not alleviate the requirement for coverage under the NPDES General Permit for Discharges from the Application of Pesticides. Section 1.1.2.3.a is referring to coverage under either an individual permit or alternate general permit that is written to cover **point** source discharges of pesticides to surface waters of the State. Additionally, MS4 permits are only directed toward municipalities and agencies such as DOT.

6. **General Comment:** Provide specific references to the South Carolina Water Pollution Control Permits Regulations 61-9 that authorize and identify terms and conditions for this discharge permit.

Response: See Part 122.1 of South Carolina Regulation 61-9. Water Pollution Control Permits.

7. **General Comment:** We object to the creation of yet another permit to regulate activities that are already regulated. We understand that there were court mandates. The state cannot possibly have resources to implement and enforce this program. Until the state has adequate resources to operate one of their regulatory programs – please stop creating new ones or passing the burden on to others.

Response: Comment acknowledged. Your concern could be addressed via federal legislation.

8. **General Comment:** If a jurisdiction has a GP for pesticides, follows all of the permit requirements – can they be held responsible under other permits for violations? For instance, groundwater contamination issues being written into the stormwater permit?

Response: Compliance with permits is judged independently.

9. **General Comment:** The amount of pesticide applications required for an individual site may vary from year to year depending on conditions, so NOIs may look different from year to year.

Response: Comment acknowledged. We would not expect NOIs to normally change from year to year. If an NOI is prepared adequately, one NOI may suffice for the term of the permit (i.e., 5 years).

10. **General Comment:** The permit appears to not directly address spray drift, suggest it be exempt.

Response: Consistent with EPA's pesticide general permit, this general permit does not cover "spray drift" with the exception of those use patterns that may include drift as an accepted method of application (e.g., mosquito fog trucks). Please see the following excerpt from EPA's fact sheet which provides the rationale for not including drift: "In promulgating the vacated 2006 rule, EPA expressly noted that the rule did not cover ... "spray drift" – the airborne movement of pesticide sprays away from the target application site into a water of the U.S. Consistent with the 2006 Rule, this PGP does not cover spray drift resulting from pesticide applications. Instead, to address spray drift, EPA established a multi-stakeholder workgroup under the Pesticides Program Dialogue Committee (PPDC), an advisory committee chartered under the Federal Advisory Committee Act (FACA) to explore policy issues relating spray drift. The goals of the workgroup were: (1) improving the understanding of the perspectives of all stakeholders regarding pesticide spray drift; (2) finding common ground for further work toward minimizing both the occurrence and potential adverse effects of pesticide spray drift; (3) developing options for undertaking work where common ground exists; and (4) exploring the extent of drift, even with proper usage, and the range and effectiveness of potential responses to unacceptable levels of off-target drift. On November 4, 2009, EPA issued a draft Pesticide Registration Notice (PR Notice) for public comment. The actions detailed in the PR Notice focus on improving the clarity and consistency of pesticide labels in order to reduce spray drift and prevent harm to human health and the environment. The draft PR Notice and related documents are available in Docket EPA-HQ-OPP-2009-0628 at www.regulations.gov. EPA is currently reviewing the public comments received."

11. **Part 1.0:** In Appendix A, the definitions for "discharge of pollutant" and "point source" seem to indicate that the PGP applies to point source discharges only. Clearly, however, the permit requires coverage for discharges from other than point sources. For example, herbicides applied along the sides of a stream channel would reach the stream not as a point source, but as sheet runoff. SCDHEC should include an explanation within either the PGP, its Rationale, or the Response to Comments documenting the legal and regulatory authority for regulating discharges of pesticides from other than point sources.

Response: This permit only covers point source discharges associated with the application of pesticides (as determined by federal court ruling). Pesticides entering a surface water of the State during pesticide application would be covered under this permit. Pesticides captured in storm water runoff which then enters a water of the State is not addressed by this permit.

12. **Part 1.0 and Appendix A:** Section 1.0 and the definition of "Operator" seem to require that both the "Applicator" and the "Owner" submit separate NOIs if both exceed one or more of the thresholds. It is not clear why both entities must maintain records for the same pesticide application(s). If this is the intent of the PGP, then clarification should be included either within a Guidance Document or the Response to Comments to help permittees understand why this duplication of effort is necessary.

Response: The Department felt that the approach taken with EPA's draft permit where either the owner, the for-hire applicator, or both could submit the NOI would possibly lead to confusion and 'finger-pointing' from a compliance standpoint. For example, "I thought he submitted the NOI". Both the owner and the for-hire applicator have responsibilities under this permit, therefore both are being required to submit an NOI if they exceed an annual threshold. The NOI information requirements; however, will vary between the owner and the licensed applicator. We are only asking the owner, the entity making the decision to apply, to provide information regarding the location and size of the treatment area. The for-hire applicator does not have to provide specific location information. The Department has revised Parts 4.0 and 6.0 of the permit to clarify the responsibilities of the owner and the for-hire applicator. With regard to recordkeeping, the Department feels

that it is important for both the owner and any for-hire applicator hired by the owner to maintain records regarding the pesticide application. There was no change to Part 7.0 of the permit based on this comment.

13. **Part 1.1.1:** Eliminate from the DHEC permit Pesticide Use Pattern # 5 (Intrusive Vegetation Control) and Pesticide Use Pattern # 6 (Other Similar Activities) as they are not permitted under the EPA permit. If they are included in the permit, then anyone applying pesticides under those patterns should be required to submit an NOI regardless of size of treatment.

Response: DHEC does not need to match the EPA permit in terms of scope of coverage. EPA may choose to limit the coverage of their permit with the idea of more general permits later. The requirement to submit an NOI at certain thresholds is reasonable to not create a burden on smaller applicators/owners. Regardless of the requirement to submit an NOI, the permit applies to those smaller users.

14. **Part 1.1.1:** We are supportive of the inclusion of the Intrusive Vegetation Control use category (Pattern #5). The addition of this category provides guidance regarding pesticide applications near utility right-of-ways and roads, thereby promoting proper pesticide management. Similarly, we endorse the creation of a use category for Other Similar Activities (Pattern #6) because it is virtually impossible to contemplate and categorize all potential pesticide uses. We believe that the creation of these additional pesticide categories will better inform pesticide applicators regarding their responsibilities covered under this general permit, which will ensure enhanced compliance and better overall pesticide management in general. Individual permitting would create a burden and delay for both SC DHEC and applicators, and there has been no showing of need to justify individual permits.

Response: Comment acknowledged. No response necessary.

15. **Part 1.1.1.b:** The term “at waters edge” does not appear to be defined in the permit. Suggest defining in the permit to ensure that land application is not included in the permit.

Response: Although ‘water’s edge’ is not explicitly defined in the permit, it is described in the definition of ‘Treatment Area’ in Appendix A of the permit – “...pesticide applications that occur “at water’s edge”, where the discharge of pesticides directly to waters is unavoidable....”. Additionally, it should be noted that the level of the water in a water body does not necessarily define the full extent of the waters of the State. For example, in a drought situation, the water level may be below the level that defines the boundary of the water of the State (e.g., for a lake, the ‘full pool’ elevation).

Application of pesticides to the land (i.e., area outside the boundary of a waters of the State) does not require coverage under this permit.

16. **Part 1.1.1.d:** Please clarify the practices of Use Pattern #4, Forest Canopy Pest Control to better reflect common forestry practices. This should include ground-based as well as aerial application; and understory and mid-story applications in addition to canopy. Including vegetation control among the examples would also be helpful. Changing the name of this use pattern to “Forest Pest Control” would be more inclusive and minimize confusion about the types of silvicultural applications that qualify under this use pattern.

Response: Agreed. The Department has clarified the description of Pesticide Use Pattern # 4 in the permit and fact sheet/rationale to better reflect common forestry practices.

17. **Part 1.1.1.f:** Please define or give examples? How do you calculate/quantify these? Will we be notified that its necessary to submit an NOI prior to being issued a citation for non-compliance?

Response: An example would be the application of pesticides to spray public lands to control weeds where some of the pesticide unavoidably is applied to surface waters of the State. Although Pesticide Use Pattern # 5 addresses rights of way, the above example may be similar enough to designate the requirements of Pesticide Use Pattern # 5. In that case, you would submit an NOI requesting coverage for this use pattern as an “other similar activity” (Pesticide Use Pattern # 6) since it is similar to # 5. We would consider granting coverage and assigning the responsibilities of Use Pattern # 5 (e.g., IPM for Use Pattern # 5). This would keep us from having to write a separate NPDES permit for an similar activity.

18. **Part 1.1.1.f:** Automatic approval within 10 days of the Department’s receipt of the NOI should be eliminated. Application of pesticides should not proceed until review of the NOI is completed. The Department should change to the wording to “If no response is received within 10 days, then please contact [staff name] at [phone/e-mail] to determine status of your NOI.”

Response: We believe this provision is reasonable and have not changed this aspect of the permit. We have all the discretion to take needed actions after 10 days and believe that delays in application of pesticides (e.g., compromising public health protection) would have negative, unintended consequences. Part 1.2.3 of the permit has been clarified to reflect the Department’s authority to take needed actions after automatic coverage has been granted.

19. **Part 1.1.2:** The language is very restrictive since it states “You are not eligible for coverage under this permit if discharges are covered by another NPDES permit.” Please clarify.

Response: Part 1.1.2.3.a is referring to coverage under either an individual permit or alternate general permit that is written to cover **point** source discharges of pesticides into surface waters of the State. You can have coverage under NPDES permits that do not address point source discharges of pesticides (MS4, for example) and still obtain coverage under the NPDES General Permit for Discharges from the Application of Pesticides provided that you are not prohibited by the other limitations on coverage included in Part 1.1.2. For clarification, Part 1.1.2.3.a has been revised to read: “The discharges from the application of pesticides are covered by another NPDES permit...”. Part 1.1.2.3.b has been revised to read: “The discharges from the application of pesticides were included in a permit...”.

20. **Part 1.1.2.1:** How does an operator who is applying pesticides to an upland pond know that the pond eventually flows into a 303(d) waterbody? How do they know if the site they are being asked to treat is impaired?

Response: To clarify, if the pond is not a water of the State (e.g., treatment works, storm water treatment pond), then the permit does not apply. Additionally, the restriction defined in Part 1.1.2.1 of the permit is limited to **direct** discharges to a surface water of the State impaired for the pesticide or its degradates. A list of impaired waters is available on our website at <http://www.scdhec.gov/environment/water/tmdl>. Also, upon request, a hard copy of the 303(d) list can be made available for viewing at the Department’s regional Environmental Quality Control (EQC) offices.

21. **Part 1.1.2.1:** Please advise how a project that was permitted to be constructed and permitted to discharge to a water body, now be excluded from being able to discharge by a third permit because a monitoring station down the river is listed on a 303(d) list? What compensation will the state provide for loss of revenue to that business for the termination of their discharge?

Response: If you apply pesticides to a stormwater treatment pond (e.g., treatment works as defined in Appendix A), coverage under this permit is not required and therefore the restrictions of this permit do not apply.

22. **Part 1.1.2.1:** Who will be considered the violator if the outfall point is owned by someone other than the applicator? The jurisdiction owning the pipe? For example, non-point source stormwater runoff to the stormwater system. The guidance provides limited definitions of “near” or close proximity and references applications along a ditch bank, however, there are stormwater inlets everywhere. The chance that something will not drift into an inlet or that residue would not run-off at the next event is nearly impossible. Will each potential inlet or upland connection to waters of the State be monitored and inspected by the state? Who will pay for testing to determine potential contributors? Is this being pushed back on the jurisdictions? The pesticide applicant?

Response: Non-point source runoff carrying pesticides and/or pesticide residues which enter surface waters of the State is not regulated under this permit. This may make the other questions moot.

23. **Part 1.1.2.1:** Prohibit discharges to waters impaired for ‘aquatic toxicity’ or require an individual permit.

Response: The Department’s approach with regard to discharges to impaired waters is consistent with EPA’s draft permit. Additionally, the Department has the right to require individual permits in a water body should it obtain information which indicates that the ‘aquatic toxicity’ impairment is due to a pesticide or its degradates.

24. **Part 1.1.2.1:** Discharges to waters impaired for pollutants other than the pesticide or its degradates are eligible for coverage. This may allow for cumulative or synergistic effects of pollutants, leading to further impairment of the water body. Every effort should be made to investigate these potential effects or interactions of the discharge with current impairments. If there are known detrimental effects, an individual permit and management plan should be required. Additionally, if no NOI is required, the Department will have no way of ensuring the operators have determined if the target waterbody is impaired for the pesticide or its degradates per the permit requirements. Finally, the Department should provide multiple methods for applicators to determine the status of impaired waters, as access to the internet may not be available to all operators.

Response: This permit, as with all general permits, allows for DHEC to write an individual permit as needed. Submission of an NOI by an operator would not “ensure the operators have determined if the target waterbody is impaired...”. An NOI would give the Department information about who is applying, but there would be no information about the timing of the application from the submission of an NOI. DHEC will use resources available, where appropriate, to assess impairments and to work on TMDLs to identify sources. Upon request, a hard copy of the 303(d) list can be made available for viewing at the Department’s regional Environmental Quality Control (EQC) offices.

25. **Part 1.1.2.2:** Prohibit discharges under the general permit to Tier 3, Outstanding National Resource Waters (ONRW) consistent with EPA’s permit. Provide the same protection to Tier 2 ½ (Outstanding Resource Waters (ORW)), trout waters, and shellfish waters. Require individual permits for these discharges and require careful monitoring and reporting of adverse effects. If coverage of Tier 3 waters is allowed under the general permit, public notice coverages. Include requirement everywhere Tier 3 (ONRW) waters are mentioned in permit.

Response: The obligation to report adverse effects already exists for operators in the general permit – for all waters. EPA's draft permit did not restrict the discharge to ORW, trout or shellfish waters. In this respect, this

permit is consistent with EPA's draft. EPA's gave guidance to the states when drafting the permit. EPA expects that compliance with the conditions in the permit will control discharges as necessary to meet applicable water quality standards. EPA has three “national” general permits (MSGP, CGP, VGP), all of which use a similar approach for addressing water quality-based effluent limits. DHEC expects that compliance with the permit will protect water quality standards and therefore the uses those standards are designed to protect. DHEC is planning, as resources allow, to develop a web page identifying coverages under the general permit.

26. Part 1.2.2: Reduce the areal and length thresholds for submittal of an NOI.

Response: For any potential permit modification in the future and/or for the reissuance of the permit, DHEC is open to a specific recommendations and justification. One approach would be to require all operators to submit an NOI (i.e., no threshold distinction). Since the permit applies to entities applying to water, both small and large, the extra burden of an NOI submission for small operators (to include the annual fee associated with an NOI) did not seem justified. We think the final thresholds are reasonably balanced for this new regulatory program.

27. Part 1.2.2: Application of pesticides (forest pest control) in uplands where no water is present should not count towards the annual treatment area threshold. This will prevent placing additional requirements on landowners or operators who may exceed the acreage threshold overall, but have very few applicable acres where pesticides may enter waters of the state.

Response: Application to uplands does not require coverage under this permit. However, if an applicator's aerial application of pesticides (for example) to control forest pests results in the discharge of pesticides to surface waters (directly, not via non-point source runoff), coverage under this permit is needed. In such a case, we thought that it was unrealistic to expect the applicator to add up the extent to which pesticides were reaching surface waters (e.g., intermittent streams, small creeks and wetlands within a forest). In contrast to those applying in Pesticide Use Patterns # 2 and # 3, it is not obvious when the pesticides are reaching surface waters. Therefore, similar to Pesticide Use Pattern # 1 (Mosquito and Other Flying Insect Pest Control), which may also involve aerial application, we set the threshold area large enough to account for the inclusion of uplands within the area of application.

28. Part 1.2.2: It is suggested that all agricultural, commercial, industrial, and governmental users be required to submit an NOI, regardless of whether or not they exceed a threshold. Thresholds could be used to assess fees appropriately (individual homeowners should be exempt). Or if feasible, the Department should use the current FIFRA process to compile a list of all individuals covered under the PGP, regardless of the NOI requirements.

Response: First, our fee structure (\$100/year) is already set in regulation 61-30 and it is triggered by the submission of an NOI. We can consider a different fee structure as a separate matter. Second, while via FIFRA regulation (Clemson's regulatory program), there is a database that may inform DHEC and others about the potential universe of licensed applicators, that does not mean that each applicator needs coverage under this permit. Third, small users, while they don't have to submit an NOI, are still obligated to follow the permit (with a few specific tasks exempted in the permit – e.g., PDMP). We think it is a reasonable approach balancing the need for notice to DHEC and the administrative burden to the regulated community. In any situation, we can determine that an individual permit is needed as we run this new program.

29. Part 1.2.2: Please explain the rationale for each of these thresholds and the science behind them.

Response: The rationale for the thresholds is in the Department's Fact Sheet/Rationale, pages 7 & 8.

30. **Part 1.2.2:** Many small municipalities do not have the fiscal means of increasing operations to monitor types of mosquitoes, population determinations, and larval infestations. These additional permitting requirements could effectively end the control operation. Has DHEC assessed the idea of a tiered system of requirements based on large applicators versus small applicators with differing sets of requirements?

Response: A tiered approach is exactly how the permit is set up. So, for example, a small program that does not exceed the threshold, does not have to:

- submit an NOI
- perform the integrated pest management practices (IPM), and
- does not have to prepare a pesticide discharge management plan (PDMP).

They would, however, have to meet all other applicable parts of the permit.

31. **Part 1.2.2:** 200 acres is a very low threshold. Suggest a threshold of 500 acres of treatment area for Aquatic Weed and Algae Control.

Response: Other commentors on this permit thought the 200 acre threshold was too high. The Department believes this threshold is fair and not overburdensome.

32. **Part 1.2.2, Table 1, Footnote 1:** Is the threshold based on the total surface area of the water body or just the treated area of the water body? The way calculations are made should be explicit in the permit.

Response: It is only for the treatment area, per the definition of treatment area in Appendix A. So for example, if you apply pesticides for aquatic weed control in one cove of a lake, it is the area of the cove, not the area of the entire lake.

33. **Part 1.2.2:** When calculating the total linear miles – do you count every median of a roadway as a separate area or just calculate the LM of the roadway from point A to point B?

Response: Just total linear miles if you are referring to Pesticide Use Pattern # 5. Threshold calculations vary depending on the use pattern.

34. **Part 1.2.2:** Do we sum the total areas to which we apply (ball fields, canals, etc.) and multiply times the frequency and compare to the annual threshold? Do we get one permit for everything? - or for each type of activity? How about a contractor spraying manmade ponds? – totally separate calculation? – separate permit?

Response: You can submit one NOI for more than one use pattern (activities). Threshold calculations, however, are use pattern specific (i.e., perform calculations on each use pattern separately to determine if it exceeds a threshold). If you exceed a threshold for any pesticide use pattern, an NOI is required. However, if you need coverage for multiple use patterns, the IPM and PDMP requirements only apply to the use pattern(s) that exceed the threshold. Note that a request under “other similar activities” (1.1.1.f) will result in a case-by-case determination of the requirements that would apply. With regard to manmade ponds, if a manmade pond fits the definition of “treatment works” (see new definition in Appendix A – which is taken from Regulation 61-9 and the Pollution Control Act), then application to that area does not need to be covered by this permit. See also response to comment #21.

35. **Part 1.2.2, Table 1:** If the US EPA raises the proposed thresholds contained within their draft PGP, SCDHEC should raise their thresholds to coincide appropriately.

Response: The Department believes that the thresholds in the draft permit are fair and not overly burdensome; therefore there are no changes to thresholds in the final permit.

36. **Part 1.2.2:** Our company supports the ability afforded by the general permit to submit a discretionary NOI for coverage even when it is not readily apparent that a use category threshold was triggered.

Response: Comment acknowledged. No response necessary.

37. **Part 1.2.2:** Multiple contractors are located at and do business on our property. More than one of those contractors may either apply pesticides themselves, or hire a subcontractor to apply pesticides for them in areas for which they are responsible. If none of the individual pesticide applications by the individual contractors exceed a threshold, but the cumulative total of pesticides applied by all of the contractors exceeds a threshold, is the property owner required to submit a Notice of Intent (NOI) for coverage under the PGP as "Owner" of all facilities and land located at the property? Since this is a question rather than a comment and the answer may not necessarily result in changes to the PGP, an answer within the Response to Comments would be adequate.

Response: Yes, the owner is responsible for submitting an NOI for those use patterns exceeding a threshold, even if the individual for-hire applicators doing the work did not exceed a threshold.

38. **Part 1.2.2:** Who is responsible for notifying homeowner associations, golf courses, etc. about the forthcoming permit and the requirements? Local jurisdictions, through any NPDES permit should not be made responsible for enforcement or compliance with this regulation.

Response: DHEC has made and will make several additional efforts to educate owners and for-hire applicators of the new requirements. In part, DHEC will provide web-based information (see http://www.scdhec.gov/environment/water/npdes_pesticide.htm), work through existing organized groups, speak at meetings, etc. Additionally, the Department will schedule a compliance assistance session for potential permittees – check the Department’s website for details. We understand that a new program like this will take some time for all people affected by the program to get up to speed.

39. **Part 1.2.3:** Restrict the definition of pesticide emergencies for which submittal of an NOI may be delayed. Specifically, prohibit the use of this provision for ONRW and ORW waters.

Response: We believe that during the time of an emergency needing the application of pesticides, it is reasonable to have a delayed NOI, even in ORW and ONRW waters. In most situations, we expect that the entity would have already submitted an NOI due to the potential to exceed an annual threshold.

40. **Part 1.2.3:** The April 9, 2011 coverage date appears arbitrary. Provide further information on either maintaining our ability to continue current mosquito control operations as we can not cease these activities due to the public health issue. Provide a schedule of how to become authorized to discharge under the NPDES General Permit (including time frames for NOI and approval and granting coverage).

Response: April 9, 2011 was the date specified by a federal court ruling when NPDES permit coverage is needed for the activities addressed in this permit. The permit has been written such that if a new effective date is mandated by the court, that will be the effective date of the permit. We do not anticipate that people will have to cease application of pesticides to gain coverage under the permit. A schedule for coverage is detailed in Table 2 of the permit.

41. **Part 2.2.1:** The permit requirements specify dip cup operations to determine mosquito infestations prior to application. There are many instances that no standing water exists that can be tested and yet mosquitoes are still prevalent. How do we respond to this requirement?

Response: Part 2.2.1.1.1 of the permit directs the permittee to establish densities for larval...populations to serve as action threshold(s).... It does not specify dipping techniques. The Fact Sheet/Rationale for the permit, under Mosquito Control IPM Practices, lists standard mosquito dipping techniques as a way of determining larvae action thresholds. Please note that the Fact Sheet/Rationale is not part of the permit. The Fact Sheet/Rationale sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit and the Department's rationale behind the permit conditions.

42. **Part 2.2.2.3.1:** Is application of herbicides in a pond to stay ahead of the pest problem considered preventative application?

Response: Yes, if in accordance with Part 2.0 of the permit.

43. **Part 2.2.5:** This section dealing with Intrusive Vegetation Control is not in the EPA permit or fact sheet. Request removal. Does this section exclude or include general weed control on ball fields, right of way turf control, grounds maintenance, and/or control of non-woody species?

Response: With regard to removing Pesticide Use Pattern # 5 Intrusive Vegetation Control, people performing this use pattern, where pesticides are applied to surface waters of the State, would need a separate NPDES permit to effect that activity. Therefore, we have concluded that there would be utility in having this use pattern available to those that would need it. This use pattern does not include general weed control. However, we have Pesticide Use Pattern # 6 Other Similar Activities as an option to possibly address those general activities if they were to result in a discharge to a surface water of the State. We assume that not all the activities described in your examples would involve application (necessarily or unavoidably) to waters of the State. Keep in mind that entities that perform intrusive vegetation control and keep pesticides out of waters of the State do not need an NPDES permit at all.

44. **Part 4.0:** The permit does not require monitoring of operators by a third party. To ensure compliance with the permit and to reduce adverse effects, the Department should conduct proactive, random monitoring. The Department should also strengthen and clarify the monitoring requirements to ensure detection of, and reduce or eliminate, adverse incidents. Possible resulting enforcement actions should be strengthened and clarified as well.

Response: With regard to third party monitoring, FIFRA rules continue to apply, including the licensing responsibilities via Clemson's pesticide regulatory program. DHEC will address appropriate compliance activities. We believe the monitoring requirements included in the draft permit were sufficient; however, we have reworded Part 4.2 monitoring requirements in the final permit to clarify the Departments intent. As the program unfolds, it would be helpful to have specific suggestions regarding how to identify adverse incidents.

45. **Part 4.2:** Require submittal to DHEC of justification for not carrying out visual inspections based on safety or accessibility concerns.

Response: We have modified Part 7.1 of the permit (recordkeeping requirements for operators) to require documentation of justification for not performing Part 4.2 monitoring.

46. **Part 6.4:** The Department should strengthen this section with specific parameters that will aid the operator in judging whether or not an adverse incident is normal and in determining which similar pests are expected to be affected due to the application. Also, we suggest that the Department establish an online and searchable database that provides public access to all NOIs, annual reports, adverse incident reports, and violations.

Response: We have reviewed the definition of “adverse incident”, taken from EPA’s draft permit. We find it to be very detailed. See also the Department’s response to General Comment 2 and Comment 44 above.

47. **Part 6.4:** Will the operator be responsible for reporting adverse incidents that may have resulted from that may have resulted from something other than the pesticide application?

Response: The operator is not responsible under the provisions of this permit to report adverse incidents that are not associated with his application of pesticides. However, if the operator is unsure of whether or not the adverse incident is associated with his application of pesticides, he should report it as a precautionary measure.

48. **Part 6.4.3:** Consult with SCDNR regarding endangered species in addition to Federal agencies.

Response: We believe that since the U.S. Fish and Wildlife Service and the National Marine Fisheries Service are tasked with endangered species protection, they are the appropriate contacts for this Part.

49. **Part 6.4.3:** Current permit language is reactive, rather than proactive. Either the operator or the Department should be responsible for consulting with NMFS, USFWS, and SCDNR before the pesticide application occurs in order to ensure no harm occurs to federal or state listed rare, threatened, or endangered species. Furthermore, an individual permit should be required for any pesticide application in an area where federally-listed endangered and threatened species or designated critical habitat are found.

Response: Under Part 1.5 of the permit, the operator is responsible for complying all other applicable federal and state laws and regulations pertaining to his pesticide application, including FIFRA. Operators should contact the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for information regarding endangered and threatened species and their critical habitats.

Additionally, EPA’s website provides Endangered Species Protection Bulletins - <http://www.epa.gov/oppfead1/endanger/bulletins.htm>. If the FIFRA label directs the operator to this website, the operator is required to follow the pesticide use limitations found in the Bulletin for his county, pesticide active ingredient and application month.

Additional links to resources regarding endangered/threatened species will be placed on the Department’s website - http://www.scdhec.gov/environment/water/npdes_pesticide.htm - as the program develops.

50. **Part 7.4:** Require the submittal of an annual report consistent with the EPA draft permit.

Response: The permit requires that, if requested by the Department, an operator required to submit an NOI, must provide a summary report of their operation for a specified timeframe. The Department feels that this requirement is sufficiently protective. There was a suggestion that an annual certification in lieu of the annual report detailed in EPA’s permit would be useful to remind permittees to stay up to speed with recordkeeping and allow a permittee’s records to be viewed through a Freedom of Information (FOI) request. We think the requirement to submit an NOI (if above a threshold) and pay the annual fee will serve as a reminder to permittees to keep up with the permit requirements. Also, submission of a certification would not make the supporting documentation subject to an FOI request.

51. **Part 7.4:** Requests for additional reporting, etc. are unsupported by the showing of any need and only create additional burdens for SC DHEC and applicators without providing any commensurate benefits.

Response: Comment acknowledged. No response necessary.

52. **Appendix A, Definition of ‘Adverse Incident’:** The phrase “may have been exposed” leaves the opportunity for a falsely-alleged exposure claim. There should be assurance that there is substance to a claim. Suggest using the language such as “there is evidence that” a person or non-target organism “has likely” been exposed to a pesticide residue.

Response: Item (1) under the definition of ‘Adverse Incident’ has been revised as follows: “A person or non-target organism has likely been exposed to a pesticide residue....”

53. **Appendix A, Definition of ‘Pest Management Area’:** By definition this would cover an entire golf course, however, in relation to this specific permit, would the pest management area just be the specific area to be treated?

Response: Yes.

54. **Appendix A, Definition of ‘Water of the State’:** This is different than the EPA permit. What areas are not covered in this language?

Response: The Department is directed by the Pollution Control Act (SC Code of Laws, Title 48, Chapter 1) to protect waters of the State which are defined by the Act – see definition of “Waters” under Section 48-1-10 of the Act. See also the definition of “Treatment works” under Section 48-1-10 of the Act. “Treatment works” are not “waters” of the State of SC. The Department understands that the determination of “waters” can be complicated; however, we think the “treatment works” definition helps clarify the permit coverage scope. The definition of ‘treatment works’ has been added to Appendix A of the permit. Also, the second paragraph of Part 1.0 of the permit has been revised as follows: “This general permit does not apply to the application of pesticides to areas which are treatment works (as defined in Appendix A) and to areas which are exempt from an NPDES permit (R.61-9.122.3) including....”

55. **Appendix A, Definition of ‘Water of the State’:** This definition appears to be different in every NPDES permit – the state needs to have one definition. The Stormwater permit excludes **manmade** lagoons and ponds (not impoundments) from waters of the State.

Response: The State defines ‘Waters’ (also referred to as ‘waters of the State’) in Section 48-1-10 of the Pollution Control Act (PCA). The definition of ‘Waters of the State’ in the NPDES General Permit for Discharges from the Application of Pesticides is consistent with the definition in the PCA. See also the Department’s response to Comment 54 above.

56. **Appendix C:** Will there be an actual NOI form or do we just submit the information required in Appendix C?

Response: Yes, there is an actual NOI form. It is the Department’s intent to have an online NOI system. The permittee would enter the required information online, print, sign, and submit to the Department. In the event, that there is a delay in implementation of the online system, a PDF of the form will be available on our forms page: <http://www.scdhec.gov/environment/admin/htm/eqcforms.shtml#Water>. Hardcopies of the form will be

available upon request. Also, because this is a new program, the Department is delaying the requirement to submit an NOI until sixty (60) days after the effective date of the permit. See Table 2 of the permit for more information.

57. Appendix C: Require approval for and apply a fee for submittal of an NOI. The Department should request a regulation change to allow a fee of \$200 for submittal of an NOI to provide for additional Department resources to administer this permit.

Response: At this point, we will use the existing \$100/year fee that the legislature has already approved and will consider additional fees, as needed, in this and other programs.

58. Appendix C: Our annual outlay for all materials for pesticide control is around \$10,000. If DHEC adopts a \$2,000.00 annual permit fee based on the existing MS4 NPDES permit, where is the fairness in this cost?

Response: The annual fee for this permit is \$100, not \$2000. Additionally, the permittee is not required to submit the fee with the NOI. Instead, the permittee will be billed during our annual billing for NPDES general permits (typically in August or early fall).

59. Rationale, Section 2: Please explain the rationale for “Best Professional Judgement” in the section on limitations for effluent guidelines and how this was determined.

Response: Per Part 125.3(a) of Regulation 61-9 Water Pollution Control Permits, technology-based treatment requirements under section 301(b) of the Clean Water Act (CWA) represent the minimum level of control that must be imposed in an NPDES permit issued under section 402 of the CWA. When EPA has not promulgated effluent limitation guidelines (ELG) for an industry, or if an operator is discharging a pollutant not covered by the effluent guideline, permit limitations may be based on the best professional judgment (BPJ) of the permit writer. For this permit, the technology-based limitations are based on BPJ decision-making because no ELG applies.

60. Rationale, Section 2.1.1: Clearly define “use an effective amount of pesticide product...” This definition has been modified from most permits which read “use the lowest effective amount”.

Response: An effective amount cannot be defined such that it would apply to all circumstances. The term “effective” acknowledges the applicator, who would be licensed by Clemson’s regulatory program, needs to apply judgment based on the circumstances unique to the application. The term “lowest” would be less flexible approach. The permittee is directed to use an effective amount...while avoiding over-application.... An effective amount would need to be within an allowable range provided for by the FIFRA label, but would factor in a variety of factors (such as the potential for pest resistance, for example) that a licensed operator would need to determine.

61. Comments on EPA’s permit:

The Department received, from one business, a variety of forwarded comments on EPA’s draft permit related to:

- Applicability of the permit to man-made ponds
- Scope of the PDMP
- Confidential business information
- Recordkeeping burden
- The relationship between owner and for-hire applicators (sharing of responsibilities)
- Thresholds being low

- Post application monitoring (burdensome)
- An annual report
- Difficulty for small business to define “waters of the US”
- Interest in getting more time to prepare for regulation under the NPDES program

Response: There has been some confusion apparently between EPA’s draft permit for the non-delegated states (published June 4, 2010) and SC DHEC’s draft permit (published December 15, 2010). EPA’s permit will not be for South Carolina since DHEC has been delegated the NPDES program. DHEC’s NPDES program is authorized under the SC Pollution Control Act (PCA) and applies to waters of the state of SC. The PCA defines “waters” and “treatment works.”

This permit would apply to surface waters of the state of South Carolina. We have added an exemption for use of this permit when application of pesticides is to “treatment works” and took the definition in the PCA and placed it in Appendix A. In some cases, storm water management ponds are treatment works and therefore would not need NPDES coverage for the application of, for example, pesticides for aquatic weed control. We do understand that it can be difficult to determine if certain ponds are surface waters of the state of South Carolina (or waters of the US for that matter), but this is not unique to this program.

The work of preparing a PDMP is only the responsibility for the owner, not a for-hire applicator. The level of detail of the PDMP should, “match the scope and complexity of your program.” However, the PDMP is not required if the owner’s level of activity (even if using a for-hire applicator) is below the threshold for a given use pattern. A for-hire applicator would be described in the PDMP and may need to provide certain information to an owner.

We do not envision any needed confidential business information, but state laws protect such information if it needs to be submitted to DHEC.

We believe we have kept recordkeeping to what is relevant and there is not a requirement for an annual report.

Post-application monitoring is important but believe it to be set up in a way that flexible. We have also clarified some of the language.

Regarding the desire to have more time, note that some organizations, including the Association of State and Interstate Water Pollution Control Agencies have requested that EPA go back to court and seek more time. While we cannot control that outcome, we have provided more time to submit the initial NOI (where an NOI is needed). This does not mean a delay in permit coverage, but a delay in providing DHEC the NOI.

With regard to the “shared responsibilities” comment, an owner makes the decision to pay for the application of pesticides and the applicator (for hire) carries out that decision. Both play a role in the process. See also, the Department’s response to Comment 12 above.

To clarify situations where a for-hire applicator has a lot of customers, none of which exceed the threshold by themselves, the owners would not need to submit an NOI or prepare a PDMP. However, a large for-hire applicator that has a lot of customers that cumulatively exceed a threshold would mean that the for-hire applicator would need to submit an NOI and perform the integrated pest management practices for each applicable use pattern (i.e., for each use pattern that exceeds a threshold).

See previous responses regarding thresholds.